

(b) Each designated head of a contracting activity (HCA) is authorized to issue or authorize the issuance of, at any organizational level, internal guidance which does not have a significant effect beyond the internal operating procedures of the activity, or a significant cost or administrative impact on offerors or contractors. Internal guidance issued by contracting activities will not be published in the FEDERAL REGISTER. HCA's shall ensure that the guidance, procedures, or instructions issued—

(1) Are consistent with the policies and procedures contained in this chapter;

(2) Follow the format, arrangement, and numbering system of this chapter to the extent practicable;

(3) Contain no material which duplicates, paraphrases, or is inconsistent with this chapter; and

(4) Are numbered and identified by use of alphabetical suffixes to the chapter number as follows:

4A [Reserved]

4B Agricultural Research Service.

4C Farm Service Agency.

4D Rural Development (mission area).

4E Food Safety and Inspection Service.

4F [Reserved]

4G Forest Service.

4H [Reserved]

4I Natural Resources Conservation Service.

4J [Reserved]

4K Food and Nutrition Service.

4L Animal and Plant Health Inspection Service.

4M [Reserved]

4N Departmental Administration.

4O-4P [Reserved]

4R Office of Inspector General.

4S [Reserved]

[61 FR 53646, Oct. 15, 1996, as amended at 70 FR 44, Jan. 3, 2005]

#### **401.304 Agency control and compliance procedures.**

(a) The AGAR System is under the direct oversight and control of the SPE, who is responsible for review and issuance of all Department-wide acquisition regulations published in the FEDERAL REGISTER to assure compliance with FAR part 1.

(b) The SPE is also responsible for review and issuance of unpublished, De-

partment-wide internal guidance under the AGAR System.

(c) HCA's are responsible for establishment and implementation of formal procedures for oversight and control of unpublished internal guidance issued within the contracting activity to implement FAR or AGAR requirements. These procedures shall be subject to the review and approval by the SPE.

(d) The SPE is responsible for evaluating coverage under the AGAR System to determine applicability to other agencies and for recommending coverage to the FAR Secretariat for inclusion in the FAR.

(e) Recommendations for revision of existing FAR coverage or new FAR coverage shall be submitted by the HCA to the SPE for further action.

#### **401.370 Exclusions.**

Subject to the policies of FAR subpart 1.3, certain USDA acquisition policies and procedures may be excluded from the AGAR under appropriately justified circumstances, such as:

(a) Subject matter which is effective for a period less than 12 months.

(b) Subject matter which is instituted on an experimental basis for a reasonable period.

(c) Acquisition procedures instituted on an interim basis to comply with the requirements of statute, regulation, Executive Order, OMB Circular, or OFPP Policy Letter.

#### **401.371 AGAR Advisories.**

The SPE may issue AGAR Advisories, consistent with the policies of the FAR and the AGAR, for the following purposes:

(a) To communicate Department-wide policy and/or procedural guidance to contracting activities;

(b) To delegate to procurement officials authority to make determinations or to take action to implement the policies of the FAR or the AGAR; and,

(c) To establish internal policy and procedures on an interim basis, prior to incorporation in the AGAR or in a Departmental Directive.

(d) AGAR Advisories are only available in electronic format on the USDA

#### **401.372**

Procurement Web site at <http://www.usda.gov/procurement/>.

[61 FR 53646, Oct. 15, 1996, as amended at 70 FR 44, Jan. 3, 2005]

#### **401.372 Departmental directives.**

Subject to the policies of FAR 1.3, USDA from time to time may issue internal directives to establish procedures, standards, guidance, or methods of performing duties, functions, or operations. Such directives include Departmental Regulations (DR's), Departmental Notices, and Secretary's Memoranda.

### **Subpart 401.4—Deviations From the FAR and AGAR**

#### **401.402 Policy.**

Requests for authority to deviate from the provisions of the FAR or the AGAR shall be submitted in writing as far in advance as the exigencies of the situation will permit. Each request for deviation shall contain the following:

(a) A statement of the deviation desired, including identification of the specific paragraph number(s) of the FAR and AGAR;

(b) The reason why the deviation is considered necessary or would be in the best interest of the Government;

(c) If applicable, the name of the contractor and identification of the contract affected;

(d) A statement as to whether the deviation has been requested previously and, if so, circumstances of the previous request;

(e) A description of the intended effect of the deviation;

(f) A statement of the period of time for which the deviation is needed; and

(g) Any pertinent background information which will contribute to a full understanding of the desired deviation.

#### **401.403 Individual deviations.**

In individual cases, deviations from either the FAR or the AGAR will be authorized only when essential to effect a necessary acquisition or where special circumstances make such deviations clearly in the best interest of the Government. Except for cost principles, HCA's may approve individual deviations from the AGAR, after co-

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ordinating with the General Counsel and the SPE. No deviations from the FAR or AGAR may be authorized at the contracting office level. A copy of each deviation and its supporting documentation shall be provided to the SPE. Deviations from the FAR shall not be made unless such action is authorized by the SPE after consultation with the Office of the General Counsel and any other appropriate office, on the basis of a written justification stating clearly the special circumstances involved.

#### **401.404 Class deviations.**

Where deviations from the FAR or AGAR are considered necessary for classes of contracts, requests for authority to deviate shall be submitted in writing to the SPE for approval. The SPE may authorize class deviations from the FAR without consulting the Chairperson of the Civilian Agency Acquisition Council where urgency precludes consultation. The SPE shall subsequently inform the Chairperson of the Civilian Agency Acquisition Council of the deviation including the circumstances under which it was required.

### **Subpart 401.6—Contracting Authority and Responsibilities**

#### **401.601 General.**

(a) The authority and responsibility vested in the Secretary to manage USDA's acquisition function is delegated through the Assistant Secretary for Administration to the SPE. This broad authority includes, but is not limited to, the following responsibilities:

(1) Prescribing and publishing Departmental acquisition policies, regulations, and procedures.

(2) Taking any necessary actions consistent with policies, regulations, and procedures with respect to purchases, contracts, leases, and other transactions.

(3) Designating contracting officers.

(4) Establishing clear lines of contracting authority.

(5) Evaluating and monitoring the performance of USDA's acquisition system.